

The Honorable _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

PACKAGING CORPORATION OF
AMERICA, INC.,

Plaintiff,

v.

LUNDBERG, LLC f/k/a A.H. LUNDBERG
ASSOCIATES, INC., DUSTEX
CORPORATION d/b/a LDX SOLUTIONS,
and A.H. LUNDBERG SYSTEMS, INC.,

Defendants.

Case No. _____

COMPLAINT FOR:

- (1) PRODUCT LIABILITY – NEGLIGENCE;**
- (2) PRODUCT LIABILITY – STRICT LIABILITY;**
- (3) NEGLIGENCE;**
- (4) BREACH OF IMPLIED WARRANTY – FITNESS FOR A PARTICULAR PURPOSE;**
- (5) BREACH OF EXPRESS WARRANTY;**
- (6) FRAUD; AND**
- (7) UNFAIR AND DECEPTIVE BUSINESS PRACTICES.**

JURY DEMAND

1 Plaintiff Packaging Corporation of America, Inc. (hereinafter the “PCA” or “Plaintiff”)
2 complains and alleges causes of action against Lundberg LLC f/k/a A.H. Lundberg Associates,
3 Inc., Dustex Corporation d/b/a LDX Solutions, and A.H. Lundberg Systems, Inc. (the “Lundberg
4 Defendants” or “Defendants”) as follows.

5 **THE PARTIES**

6 1. PCA is a publicly traded Delaware corporation with its principal place of business
7 in Lake Forest, Illinois. PCA is a leading manufacturing of paper and pulp products. PCA’s
8 business operations are located in 29 states as well as Canada. In Washington State, PCA operates
9 in four locations: Wallula, Richland, Auburn, and Algona.

10 2. Lundberg, LLC f/k/a A.H. Lundberg Associates, Inc. (“Lundberg”), is
11 headquartered and conducts its principal operations in Bellevue, Washington. For many years,
12 A.H. Lundberg Associates, Inc. and/or Lundberg, LLC operated as a separate company, and on
13 information and belief was at times owned, affiliated, and/or controlled by A.H. Lundberg
14 Systems, Inc., of Canada. Lundberg is a leading engineering and equipment supplier in the pulp
15 and paper industry, wood products industry, and many other process industries. Several of the
16 products at issue in this case were designed, manufactured, assembled, installed, marketed, sold,
17 and/or maintained by Lundberg in the state of Washington. On information and belief, Lundberg
18 now is wholly owned, controlled, and operated by Dustex Corporation, d/b/a LDX Solutions, a
19 resident of Georgia and North Carolina.

20 3. On information and belief, Dustex Corporation, d/b/a LDX Solutions, is a North
21 Carolina corporation with its principal place of business in Kennesaw, Georgia. On information
22 and belief, LDX Solutions as a d/b/a resulted from the combination of the separate brands
23 Lundberg, LLC and Dustex LLC.

24 4. On information and belief, A.H. Lundberg Systems, Inc., is a Canadian corporation
25 with its principal place of business in Vancouver, British Columbia, Canada (“Lundberg Canada”).
26 Lundberg Canada is a leading engineering company providing environmental systems, energy

1 optimization, chemical handling, and process engineering services to power, resource, and
2 processing industries. Lundberg Canada owned, was affiliated with, and/or controlled Lundberg
3 for years, and manufactured equipment and systems for Lundberg for installation in pulp and paper
4 mills across the United States including in Washington State. Several of the products at issue in
5 this case were designed, manufactured, assembled, installed, marketed, sold, and/or maintained by
6 Lundberg Canada.

7 **JURISDICTION AND VENUE**

8 5. Subject matter jurisdiction is proper in this Court under 28 U.S.C. § 1332 because
9 there is complete diversity between PCA and the Lundberg Defendants and PCA seeks in excess
10 of \$75,000 (the exact amount to be determined at trial).

11 6. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391 as
12 a substantial part of the events or omissions giving rise to PCA's complaint occurred in this judicial
13 district, Lundberg is based in this district, and a substantial part of the corporate conduct that is the
14 subject of PCA's complaint was in this judicial district.

15 7. Personal jurisdiction over Lundberg is proper in this Court because, at times
16 relevant to this Complaint, Lundberg was a Washington entity with a principal place of business
17 in Bellevue, Washington.

18 8. Personal jurisdiction over Dustex Corporation, d/b/a LDX Solutions, is proper in
19 this Court because Dustex Corporation, d/b/a LDX Solutions, owns, operates, and controls
20 Lundberg, and those operations primarily occur in Washington State. Moreover, LDX Solutions
21 has purposely availed itself of the jurisdiction of this Court by virtue of its substantial contacts,
22 operations, and finances in Washington State, including substantial product design, development,
23 marketing and sales in Washington State. LDX Solutions now controls the design, manufacture,
24 maintenance and installation processes by Lundberg, which operates and is based in Washington
25 State. LDX Solutions purposefully availed itself to the jurisdiction of this Court through
26

1 systematic contacts with Washington State related to the defective products at issue in this case.
2 In any event, LDX Solutions is an alter ego of Lundberg.

3 9. Personal jurisdiction over Lundberg Canada is proper in this Court because
4 Lundberg Canada is a foreign entity that designed, manufactured, assembled, installed, marketed,
5 sold, and/or maintained, with and for Lundberg, many of the products at issue in this case and then
6 provided such products to Lundberg in Washington State. Moreover, on information and belief,
7 Lundberg Canada was affiliated with, owned, operated and/or controlled Lundberg at times
8 relevant to this Complaint. Lundberg Canada purposefully availed itself to the jurisdiction of this
9 Court through systematic contacts with Washington State related to the defective products at issue
10 in this case. In any event, Lundberg Canada was an alter ego of Lundberg.

11 **INTRODUCTION**

12 10. For over 50 years the Lundberg Defendants have been considered leading
13 engineering and system experts for equipment and processes designed specifically for paper and
14 pulp mills. An integral aspect of the Lundberg Defendants' business has been designing,
15 manufacturing, installing, and maintaining systems that evacuate non-condensable gases that may
16 be combustible from the paper and pulp mill environment. These systems that transport non-
17 condensable gases require specific safety devices to be installed to mitigate the risk of an
18 explosion. One of these safety devices is known as a flame arrester and it is designed to stop the
19 propagation of a flame throughout the entire system by stopping its transmission from one side of
20 the flame arrester to the other side of the flame arrester. A flame arrester is an integral part of the
21 entire system and serves as a critical safety device used to stop flames spreading within the system.

22 11. Since 1977, the Lundberg Defendants have been designing, manufacturing,
23 installing, assembling, selling, marketing, and maintaining proprietary design flame arresters for
24 use in these systems ("Lundberg Flame Arresters"). The Lundberg Defendants have placed
25 hundreds if not thousands of the Lundberg Flame Arresters into commerce, and installed and
26

1 maintained them at pulp and paper mills across the United States and internationally, including at
2 PCA's mills.

3 12. It was recently discovered that contrary to representations and warranties made by
4 the Lundberg Defendants for years, and contrary to the expectations and standards in the industry,
5 the Lundberg Flame Arresters were never tested and were never certified under any applicable
6 standards. This very basic and highly material information was never disclosed by the Lundberg
7 Defendants, despite the Lundberg Defendants being present at PCA's paper and pulp mills
8 frequently and regularly for decades up until 2018. This material information was concealed from
9 PCA and the industry by the Lundberg Defendants. Because it is not apparent from regular usage
10 or on the face of the Lundberg Flame Arresters, this latent defect went undetected by PCA.

11 13. Based on the discovery that Lundberg Flame Arresters were never tested and were
12 never certified to any applicable standards, PCA sent a Lundberg Flame Arrester that it had
13 purchased directly from the Lundberg Defendants in or around November 2017 for offsite testing
14 by an independent third-party facility in 2018. That Lundberg Flame Arrester completely failed
15 to operate as represented—it failed to mitigate any flame passage from one side of the safety device
16 to the other side. But, that Lundberg Flame Arrester unfortunately was damaged after only one
17 test, and so additional testing of Lundberg Flame Arresters was needed by PCA. At great cost,
18 PCA then removed all Lundberg Flame Arresters from the company's mills, replacing the critical
19 safety devices with new flame arresters that were designed, manufactured, tested, and certified to
20 applicable standards by parties not involved in this litigation.

21 14. Again at great cost, PCA then sent multiple Lundberg Flame Arresters of varying
22 sizes that had been installed at its mills and removed in 2018 for off-site testing by the same
23 leading, independent, third-party testing facility. During testing in 2019, none of the Lundberg
24 Flame Arresters worked as designed, manufactured, and marketed; none prevented the spread of
25 flame from one side of the device to the other side; none operated as represented by the Lundberg
26 Defendants; and none operated as would be expected from the industry for a critical safety device.

1 Surprisingly, the Lundberg Flame Arresters actually accelerated the flame, increasing the velocity
2 and therefore magnitude of the explosive event.

3 15. As an engineering and system design firm, the Lundberg Defendants have
4 dominated the paper and pulp mill industry for decades and their products are universally used and
5 generally regarded as safe and state of the art. But it is now known that the Lundberg Defendants'
6 products are untested, defectively designed, uncertified, and completely unable to perform their
7 primary purpose.

8 16. PCA seeks to recover all costs associated with: (1) purchasing, installing and
9 maintaining the Lundberg Defendants' systems; (2) evaluating and completing engineering and
10 upgrades to the systems designed, manufactured, assembled, installed, marketed, sold, and
11 maintained by the Lundberg Defendants; and (3) testing the Lundberg Flame Arresters for latent
12 defects and replacing the defective Lundberg Flame Arresters. PCA also seeks costs and fees for
13 bringing this action, as well as treble damages due to the Lundberg Defendants' fraudulent, unfair,
14 and deceptive business practices.

15 **FACTUAL BACKGROUND**

16 **I. PCA HIRED THE LUNDBERG DEFENDANTS TO DESIGN, MANUFACTURE, ASSEMBLE, AND** 17 **INSTALL SYSTEMS THAT WERE SAFE AND EFFECTIVE AT THE PCA MILLS.**

18 17. PCA is engaged in processing raw materials to manufacture paper, containerboard,
19 and corrugated products. PCA completes the necessary chemical processes at various mills across
20 the country. Pertinent to this lawsuit, PCA manufactures products at mills located in Counce,
21 Tennessee ("Counce Mill"), International Falls, Minnesota ("I'Falls Mill"), Jackson, Alabama
22 ("Jackson Mill"), Valdosta, Georgia ("Valdosta Mill"), and Wallula, Washington ("Wallula
23 Mill"). For purposes of this complaint, these mills are collectively referred to as the "PCA Mills."

24 18. The PCA Mills are subject to extensive regulatory oversight, including regulations
25 pertaining to environmental standards and worker safety.
26

1 19. During the paper and pulp mill manufacturing process, combustible gases, known
2 as non-condensable gases (“NCG”), are yielded as a byproduct. The NCGs are highly combustible
3 and must be captured and controlled to comply with environmental regulations.

4 20. The Lundberg Defendants engineer, design, manufacture, assemble, market, sell,
5 install, and maintain critical and complicated systems for the paper and pulp industry, including
6 systems that evacuate and incinerate the NCGs (“Lundberg Systems”).

7 21. The Lundberg Systems are “pollution compliance solutions” and are designed to,
8 among other things, safely transport and remove highly combustible NCGs to effectuate
9 compliance with environmental and worker safety standards.

10 22. The Lundberg Defendants advertise and hold themselves out as experts in
11 engineering, designing, manufacturing, assembling, installing, and maintaining systems for the
12 paper and pulp industry. As Lundberg states on its website:

13 Lundberg, an LDX Solutions brand, has 80 years of global experience engineering
14 systems that improve operational efficiencies, expand plant capacity, and reduce
15 pollution emissions. Our commitment to the industry and the experience of our staff
16 give us the expertise that our clients have come to rely on.

16 (See <https://lundbergllc.com/>).

17 23. Similar statements are also found in the predecessor company to Lundberg, A.H.
18 Lundberg Associates, Inc.’s, marketing materials and research white papers. For example,
19 Lundberg published working papers stating that “as the leading process system vendor for
20 environmental compliance systems, A.H. Lundberg Associates, Inc., was instrumental in
21 providing innovative methods for the implementations of these processes and the reduction of
22 energy costs associated with their operation.” (Declaration of Andrew Barr (“Barr Decl.”), Ex. A,
23 “Environmental Projects for the Pulp and Paper Industry in the U.S.A.,” Ms. Karra Nichols and
24 Mr. David W. Keyser, A.H. Lundberg Associates, Inc.) Lundberg further claims that it “has played
25 a key role in the design and supply of [combustible gas evacuation] systems to U.S. kraft pulp
26 mills” and that its “extensive experience with [combustible gas evacuation] systems has improved

1 [its] knowledge so that [it] may more effectively collect, condition, and transport the [gases] for
2 incineration.” (Barr Decl., Ex. A at 1-2.) Importantly, Lundberg states that “Lundberg Associates’
3 [combustible gas evacuation] systems are designed with multiple safety features” designed to
4 prevent an explosion from occurring in the system. (Barr Decl., Ex. A at 3.) One such safety
5 feature are the Lundberg Flame Arresters.

6 24. Numerous paper and pulp mills in the United States utilize Lundberg Systems and
7 rely on the quality and safety of the systems and their component parts to provide safe operations.
8 They also rely on ongoing maintenance, repairs, and improvements by the Lundberg Defendants
9 to the Lundberg Systems because the Lundberg Systems are specially designed for their specific
10 installation and use, and are proprietary rather than off-the-shelf systems. The Lundberg Systems
11 include component parts that are designed and installed for safety purposes, and are critical in mill
12 training, policies, and procedures such as boundaries for Process System Management, worker and
13 safety training, and periodic maintenance.

14 **II. THE COMBUSTIBLE NCGs MUST BE TRANSPORTED AND INCINERATED BY SPECIALLY**
15 **DESIGNED LUNDBERG SYSTEMS.**

16 25. An example of one of the Lundberg Systems is a “Non-Condensable Gas System,”
17 which removes highly combustible NCGs from the paper and pulp manufacturing processes and
18 transports them to be destroyed in an on-site incinerator. These Lundberg Systems are subject to
19 environmental and safety standards imposed by governmental agencies. Lundberg Systems are
20 critical for the safe operation of paper and pulp mills, and the safety of the mill’s workers. The
21 Lundberg Defendants hold themselves out as, and are generally considered, experts in engineering,
22 designing, manufacturing, installing, and maintaining Lundberg Systems and their component
23 parts.

24 26. In certain of the PCA Mills, PCA hired the Lundberg Defendants to design,
25 manufacture, assemble, and install Lundberg Systems that, among other things, safely processed
26 and removed NCGs from the PCA Mills. PCA chose the Lundberg Defendants to design,

1 manufacture, assemble, and install the Lundberg Systems at the PCA Mills because, since the
2 1950s, the Lundberg Defendants have been the industry leader for designing and installing
3 engineered systems, including Lundberg Systems, for use in paper and pulp mills. The Lundberg
4 Defendants held themselves out as experts and the gold standard in the industry.

5 27. Although an oversimplification, the Lundberg Systems remove harmful and
6 dangerous byproducts from the manufacturing processes of the pulp mill system through a series
7 of connected pipes that ultimately lead to an incinerator. The Lundberg System designed to
8 remove NCGs from the mill is unidirectional, meaning that it is designed to transport all NCGs in
9 the same direction towards the incinerator. The incinerator burns the NCGs consistent with best
10 practices and environmental standards. This Lundberg System's primary purpose is to collect and
11 dispose of the highly combustible NCGs while simultaneously providing a series of safeguards to
12 prevent an explosion if a flame enters the system.

13 28. The Lundberg Defendants have stated that "most importantly, the [Lundberg
14 System] must incorporate safety features which will allow easy operation of the system and yet
15 consider the fact that [NCGs are] hazardous and can cause damage to life or property if not handled
16 properly." (Barr Decl, Ex. B, "Collection and Incineration of High Volume-Low Concentration
17 Pulp Mill Noncondensable Gases," Mr. Douglas K. Giarde, A.H. Lundberg Associates, Inc. and
18 Mr. Michael Crenshaw, PCA.)

19 29. The Lundberg Defendants recognize that they are the industry leaders in providing
20 engineered systems for the paper and pulp industry. In fact, in recent filings, they describe
21 themselves as "a leading engineering and equipment supplier in the pulp and paper industry, wood
22 products industry, and many other process industries."

23 30. Moreover, the Lundberg Defendants state that they "offer spare parts, inspections,
24 rebuilds, and product improvements for all process systems and equipment within our areas of
25 expertise, including ... [Lundberg Systems]." (Barr Decl., Ex. C, Lundberg Service and Spare
26 Parts Brochure.)

1 31. The Lundberg Defendants' products are ubiquitous in the paper and pulp mill
2 industry and it is possible, if not likely, that a paper and pulp mill employee will spend an entire
3 career working solely with Lundberg Systems.

4 32. Regarding Lundberg Systems, Lundberg has stated:

5 Lundberg Associates has been instrumental in the design and supply of [Lundberg
6 Systems] for U.S. mills. Various options and designs were provided in order to suit
7 each mill's particular requirements. Potential incineration locations have included
8 Lundberg Associates' direct fired thermal oxidizers with SO₂ scrubbing, recovery
9 boilers, power boilers, lime kilns, and open flares. Each system was individually
tailored to collect the required sources and to incinerate the gases to meet
government specifications within three years of implementation of the Cluster
Rules.

10 (Barr Decl., Ex. A at 1.)

11 33. PCA is not an expert in designing, manufacturing, assembling, and/or installing
12 Lundberg Systems and thus relied on the Lundberg Defendants for each aspect of this process,
13 including the Lundberg Defendants' representations and warranties made about the integrity,
14 safety, and operation of the Lundberg Systems.

15 34. The Lundberg Defendants knew they were uniquely positioned to make
16 recommendations to PCA regarding the composition of Lundberg Systems and that PCA would
17 be relying on the Lundberg Defendants' expertise in designing, manufacturing, assembling, and
18 installing the Lundberg Systems at the PCA Mills.

19 35. The Lundberg Defendants also knew that PCA was relying on the Lundberg
20 Defendants to design, manufacture, assemble, and install Lundberg Systems that complied with or
21 exceeded all safety and environmental standards.

22 36. The Lundberg Defendants similarly knew that PCA would not have hired the
23 Lundberg Defendants to design the Lundberg Systems at the PCA Mills if PCA knew that the
24 Lundberg Systems posed undue risks to PCA's employees and/or manufacturing plants.
25
26

1 **III. THE LUNDBERG FLAME ARRESTERS INCORPORATED INTO THE LUNDBERG SYSTEMS**
2 **ARE UNTESTED, UNCERTIFIED, AND UNSAFE.**

3 37. The NCGs transported in the Lundberg Systems are highly flammable and a flame
4 in the Lundberg System could lead to an explosion. The Lundberg Defendants specifically know
5 this basic fact and acknowledge in a manual provided to PCA that “[t]he nature of the
6 noncondensable gases is to be extremely flammable. The design of the [Lundberg System]
7 includes multiple backup systems to insure the greatest amount of flame safeguards and to
8 minimize any remotely possible damage.” (Barr Decl., Ex. D, Operating and Maintenance Manual
9 for the Low Volume High Concentration Non-Condensable Gas Collection and Incineration for
10 PCA’s Valdosta, Georgia Mill (J-895386).)

11 38. As part of the Lundberg Systems, the Lundberg Defendants designed, marketed,
12 sold, installed, serviced, and maintained Lundberg Flame Arresters for PCA and other pulp and
13 paper mills in the industry. Flame arresters are devices installed in a gas piping system, such as a
14 Lundberg System, that are intended to prevent passage of flames through the device in the event
15 that the gas stream is ignited.

16 39. Given their importance, it is typical for flame arresters to be tested and certified by
17 an independent testing laboratory, such as Underwriters Laboratories (UL) or Factory Mutual
18 (FM). At minimum, a flame arrester should be tested by the manufacturer against a specific
19 standard (*e.g.*, standards set forth by the U.S. Coast Guard, American National Standards Institute,
20 American Society of Mechanical Engineers, etc.) to ensure that it is able to perform its essential
21 function.

22 40. The Lundberg Defendants have marketed themselves as the leading designer,
23 manufacturer, and installer of flame arresters in the paper and pulp mill industry with over 850
24 flame arresters installed throughout the industry. (*See* Barr Decl. Exs. A and C.)
25
26

41. On its website and to the paper and pulp industry, to this day the Lundberg Defendants hold themselves out as industry experts for the Lundberg Systems generally as well as the component part of Lundberg Flame Arresters specifically:

The collection of [Total Reduced Sulfur compounds] and volatile gases in Non-condensable Gas (NCG) and Odor Abatement Systems is an integral part of the pulp mill's environmental program. The flammability of many of these gases presents the possibility of flame propagation in the collection system's pipe lines. The flame arrester is an effective precaution against flame propagation and possible damage to process equipment. To meet the rigorous standards of our [Lundberg Systems], Lundberg developed and supplies a proprietary designed flame arrester. Since 1977, with hundreds of units installed, Lundberg's Flame Arrester has proven to be a reliable and versatile device for system safety and protection.

(See https://lundbergllc.com/wp-content/uploads/gravity_forms/4-b553dcb80bdfb0137377e7ec5bee4ee1/2018/09/Lundberg-Flame-Arrester.pdf?TB_iframe=true; see also Barr Decl. Ex. E, Lundberg Flame Arresters Brochure; and Ex. F, A.H. Lundberg Associates, Inc., Flame Arresters Brochure.)

42. The Lundberg Defendants knew that the Lundberg Flame Arresters were a critical component of the "multiple backup systems" and "flame safeguards" described by the Lundberg Defendants. Lundberg Flame Arresters were incorporated directly into the Lundberg Systems to prevent flame propagation in the event a flame is introduced into these systems.

43. In Lundberg Systems, Lundberg Flame Arresters are integrated in strategic locations and are designed to prevent a flame from spreading from one section of the system to a second section. Flame arresters effectively serve as a firewall to ensure that a flame does not lead to a fire event in the entire system or to an explosion.

44. Flame arresters are integral to the safety of the paper and pulp mill environment because an uncontrolled fire or explosion would put employees' lives and PCA's property at risk. Simply put, without functioning flame arresters, many of the systems at a paper and pulp mill would not meet applicable standards, would not pass government inspections, and would not be safe to operate.

1 45. Indeed, the importance of properly functioning flame arresters is not subject to
 2 dispute. The Lundberg Defendants have stated that “[i]n order to obtain the safe and reliable
 3 incineration of the NCG in any incineration point, a number of safety and operational
 4 considerations are *necessary*.” One of these “safety and operational considerations” is the
 5 Lundberg Flame Arresters:

6 Flame arresters provided in the gas lines at every LVHC NCG source and just
 7 upstream of where the NCG is injected into the incineration equipment will protect
 8 the LVHC sources and the [Lundberg System] equipment from damage in the
 9 unlikely event of a source of ignition combined with a gas combustibles
 concentration above the [lower flammability limit] and below the [upper
 flammability limit].

10 (Barr Decl., Ex. G, “Alternative Equipment for the Incineration of Noncondensable Gases,” Mr.
 11 David W. Keyser, P.E., Lundberg.)

12 46. The Lundberg Defendants are clear that Lundberg Flame Arresters must be
 13 properly designed and properly functioning or the Lundberg System is unsafe:

14 Even if care is taken to keep the gases outside the explosive range, and care is taken
 15 to remove ignition sources, there is still a remote possibility that a fire may occur.
 16 To minimize any potential damage flame arresters should be installed at critical
 17 points. They are designed to prevent the spread of a fire and to minimize pipeline
 and equipment damage. Typically flame arresters should be placed at each LVHC
 NCG source and at each incineration point.

18 (Barr Decl., Ex. H, “Collecting and Burning Noncondensable Gases,” Mr. L. Paul Johnson, P.E.,
 19 A.H. Lundberg Associates, Inc. and Mr. Ben Lin, P.Eng., A.H. Lundberg Systems Ltd.).

20 47. The Lundberg Defendants describe the role of Lundberg Flame Arresters in a
 21 Lundberg System as follows: “these flow devices placed at strategic locations in the system are
 22 designed to block the propagation of the flame in the noncondensable gas system. The cylindrical
 23 devices have a core of thin gauge stainless steel to serve as the arresting method. The flame
 24 arresters are intended to:

- 25 a. Dissipate the heat of combustion as rapidly as possible by large surface area to act
- 26 as a heat sink.

1 b. Disrupt the shock front associated with the flame propagation.”

2 (Barr Decl., Ex. D at 3.)

3 48. A single Lundberg System will typically have multiple Lundberg Flame Arresters
4 installed at various locations, and it is common for the single Lundberg System to have multiple
5 sized Lundberg Flame Arresters incorporated. Regardless of size, the Lundberg Flame Arresters
6 need to be able to prevent flame propagation or they fail their essential purpose and pose a
7 significant safety risk to the paper and pulp mill and its employees.

8 49. PCA hired the Lundberg Defendants to design, manufacture, assemble, install, and
9 maintain 57 Lundberg Flame Arresters at the PCA Mills, including in mills located in Washington
10 State.

11 50. Specifically, PCA hired the Lundberg Defendants to design, manufacture,
12 assemble, install, and maintain Lundberg Systems with Lundberg Flame Arresters at the following
13 locations:

- 14 a. Counce Mill – 10 Lundberg Flame Arresters
15 b. I’Falls Mill – 13 Lundberg Flame Arresters
16 c. Jackson Mill – 2 Lundberg Flame Arresters
17 d. Valdosta Mill – 20 Lundberg Flame Arresters
18 e. Wallula Mill – 12 Lundberg Flame Arresters

19 51. At the PCA Mills, the Lundberg Flame Arresters ranged from a diameter of 2”
20 to 20”, but the majority of the Lundberg Flame Arresters at the PCA Mills had diameters of 3”,
21 4”, or 6”.

52. The Lundberg Flame Arresters are generally composed of two main parts: an external housing and an internal cylindrical device. Exemplary images of both the external housing and internal cylindrical device are set forth below:

External Housing



Internal Cylindrical Device



53. The Lundberg Flame Arresters' external housing is installed directly into the Lundberg System piping. As demonstrated in the image of the external housing above, the Lundberg Flame Arresters' internal cylindrical device is not visible without removing the heavy external metal housing (the square metal piece adorned with bolts at the top of the above image of the external housing) and physically removing the internal cylindrical device. In order to remove the heavy metal housings and physically remove the internal cylindrical devices, all manufacturing at the mill must be stopped and the Lundberg System must be taken offline.

54. If working as designed, the NCGs pass directly through the Lundberg Flame Arrester's internal cylindrical device on their way to the incinerator. The internal cylindrical device is non-active unless and until a flame enters the Lundberg System. If a flame enters the Lundberg System, the internal cylindrical device is intended to block the propagation of flame from one section of the Lundberg System to another section of the Lundberg System.

55. The Lundberg Defendants represented to PCA for decades that Lundberg Flame Arresters were well-designed safety devices, were both safe and effective, met the highest

standards in the industry, and would perform their intended purpose: to stop the propagation of flames in the Lundberg Systems.

56. The Lundberg Defendants not only designed, manufactured, sold, and installed Lundberg Flame Arresters for or at PCA for decades, but the Lundberg Defendants' staff were onsite regularly at PCA to review Lundberg Systems, provide maintenance and repairs, to replace component parts, and to update Lundberg Systems.

57. At no point while onsite did any employee or representative of the Lundberg Defendants inform PCA that the Lundberg Flame Arresters were unfit for their intended purpose due to latent defects that rendered the Lundberg Flame Arresters useless.

58. At no point while onsite did any employee or representative of the Lundberg Defendants inform PCA that the Lundberg Flame Arresters were not certified, had never been tested, and did not meet U.S. and international standards. These basic and material facts were concealed from PCA.

IV. PCA LEARNS THAT THE LUNDBERG FLAME ARRESTERS CONTAIN LATENT DEFECTS THAT RENDER THEM UNFIT FOR THEIR INTENDED PURPOSE.

59. In late 2017, PCA conducted a Process Safety Management review at each of the PCA Mills. The objective of the Process Safety Management review was to, among other things, identify safety risks or hazards present at the PCA Mills.

60. PCA evaluated flammability as a potential hazard. Reviewing safety systems focused on flammability is especially important in the Lundberg Systems because, as the Lundberg Defendants have stated, "[t]he nature of the noncondensable gases is to be extremely flammable." (Barr Decl., Ex. D at 3.)

61. PCA began to review and assess whether the Lundberg Flame Arresters that were incorporated into the Lundberg Systems worked properly and effectively. The review was intended to simply confirm that the Lundberg Flame Arresters worked as intended and were able to prevent passage of flames through the device in the event that the gas stream is ignited. This

1 started with a superficial inspection of the Lundberg Flame Arresters, but soon engineers
2 recommended a more detailed inspection. In many instances, this type of work would have been
3 done by Lundberg.

4 62. When engineers not associated with Lundberg did a more detailed inspection, it
5 was noted that the Lundberg Flame Arresters had an atypical internal design and that internal
6 component of the Lundberg Flame Arresters did not appear to be manufactured to appropriate
7 tolerances (*e.g.*, the gaps were much larger than anticipated). As a result, PCA began to gather
8 more information on the design, manufacturing, testing, and certification of the Lundberg Flame
9 Arresters.

10 63. As PCA and its consultants began this information-gathering process, PCA was
11 comforted by the fact that hundreds if not thousands of Lundberg Flame Arresters were installed
12 in other paper and pulp mills across the country, and the Lundberg Defendants generally were an
13 expert engineering and design firm with decades of experience in the industry. PCA knew and
14 had worked for years with the Lundberg Defendants' engineers and experts, and had a degree of
15 confidence in their systems and work because the Lundberg Defendants were considered an expert
16 in the industry. PCA did not suspect, and had no reason to suspect, that the Lundberg Systems and
17 Lundberg Flame Arresters were far from what was represented, marketed, and sold to PCA.

18 64. Out of an abundance of caution, however, PCA requested that the Lundberg
19 Defendants provide design and manufacturing specifications as well as all certifications for the
20 Lundberg Flame Arresters. PCA also requested that the Lundberg Defendants provide information
21 demonstrating that the Lundberg Defendants tested the Flame Arresters to accepted U.S. and
22 international standards before placing them on the market for the stated purpose of mitigating the
23 risk of a flame spreading through a Lundberg System.

24 65. The Lundberg Defendants delayed responding initially, and ongoing projects by the
25 Lundberg Defendants at PCA Mills were jeopardized because of a failure or perceived refusal to
26 provide information. Finally, for the first time ever, the Lundberg Defendants stated that they

1 could not provide such information because they in fact had never tested or certified the Lundberg
2 Flame Arresters to any applicable standards, either internally or externally with a third-party
3 testing facility. The Lundberg Defendants also refused to provide any actual design and
4 manufacturing specifications, and only provided a rough, hand-drawn schematic and a 1985 article
5 that set forth general engineering techniques for flame arresters.

6 66. The Lundberg Defendants were ultimately either unable or unwilling to provide
7 any data or information showing that the Lundberg Flame Arresters were able to perform their
8 primary purpose. The Lundberg Defendants thus had no factual basis to state that the Lundberg
9 Flame Arresters are “an effective precaution against flame propagation and possible damage to
10 process equipment,” and the Lundberg Defendants further knew that without any testing or
11 certification that the statement was false.

12 67. The Lundberg Defendants also knew they had no basis to state that Lundberg Flame
13 Arresters have “proven to be a reliable and versatile device for system safety and protection.”
14 (Barr Decl., Exs. E and F.) That statement is demonstrably false.

15 68. PCA and many others in the industry relied on the Lundberg Defendants’
16 representations, statements, and warranties when evaluating and making the decision on what
17 engineering firm to hire, what systems to install, and what flame arresters to use in those systems.
18 The Lundberg Defendants for decades concealed these basic facts – no testing, no certifications
19 and no effort to prove the design of a critical safety device – from PCA and the industry.

20 69. Simply put, this was the first time PCA learned that the Lundberg Defendants, as
21 experts in the industry, had never tested or certified the Lundberg Flame Arresters to applicable
22 U.S. and international standards, including applicable ISO and U.S. Coast Guard protocols and/or
23 standards.

24 70. PCA relied on the Lundberg Defendants’ engineering expertise, specific to the
25 paper and pulp mill industry, and several express representations regarding both the efficacy and
26 safety of the Lundberg Systems and the Lundberg Flame Arresters, when evaluating and deciding

1 to hire the Lundberg Defendants to design, install, maintain, and update systems. PCA relied on
 2 these same things when deciding to purchase component parts from the Lundberg Defendants such
 3 as new or replacement Lundberg Flame Arresters, including as recently as November 2017. If
 4 PCA had known that the Lundberg Defendants had never tested and certified the Lundberg Flame
 5 Arresters to applicable standards, it never would have purchased and installed the Lundberg
 6 Systems.

7 **V. PCA HIRED AN INDEPENDENT THIRD-PARTY CERTIFICATION FACILITY TO TEST THE**
 8 **LUNDBERG FLAME ARRESTERS. THE TESTING DEMONSTRATED CONCLUSIVELY THAT**
 9 **THE LUNDBERG FLAME ARRESTERS HAD LATENT DEFECTS AND WERE UNABLE TO**
 10 **PERFORM THEIR PRIMARY PURPOSE.**

11 **A. A Test Lundberg Flame Arrester Failed Independent Third-Party Testing.**

12 71. In an effort to determine whether the Lundberg Flame Arresters were an effective
 13 safety device, which was required due to their never being tested and certified by the Lundberg
 14 Defendants, PCA hired an independent engineering consulting firm and an independent third-party
 15 testing facility, Aber Shock in Wales, United Kingdom, to test the efficacy of a Lundberg Flame
 16 Arrester.

17 72. Aber Shock is one of the only flame arrester testing and certification facilities in
 18 the world. Aber Shock was available to test one Lundberg Flame Arrester in January 2018 (“2018
 19 Test”).

20 73. PCA already had purchased a brand new 6” Lundberg Flame Arrester directly from
 21 Lundberg in November 2017 (“6” Test Flame Arrester”).

22 74. The 6” Test Flame Arrester had never been introduced into a Lundberg System and
 23 was brand new at the time of the 2018 Test. Put differently, the 6” Test Flame Arrester was exactly
 24 as the Lundberg Defendants had designed, manufactured and sold the product, with no changes or
 25 use, and when tested was in the same condition as it was when it was purchased by PCA from the
 26 Lundberg Defendants.

75. The 6" Test Flame Arrester was manufactured by Lundberg in 2017 and was assigned P.O. No. 227024, Project No. J-175728, and Equipment No. 175728-G801-01:



76. Aber Shock's inspection showed that the 6" Test Flame Arrester had more internal space—*i.e.*, an unanticipated gap between the external housing and the internal cylindrical device. Aber Shock's inspection also found that there was a larger than anticipated gap around the 6" Test Flame Arrester's internal cylindrical device that could allow gases and a flame to bypass the internal cylindrical device that was in place to provide the heat sink. The internal cylindrical device also had larger openings than competitors' designs.

77. Aber Shock conducted industry approved testing to determine whether the 6" Test Flame Arrester performed its primary purpose of preventing the proliferation of a flame introduced into a Lundberg System.

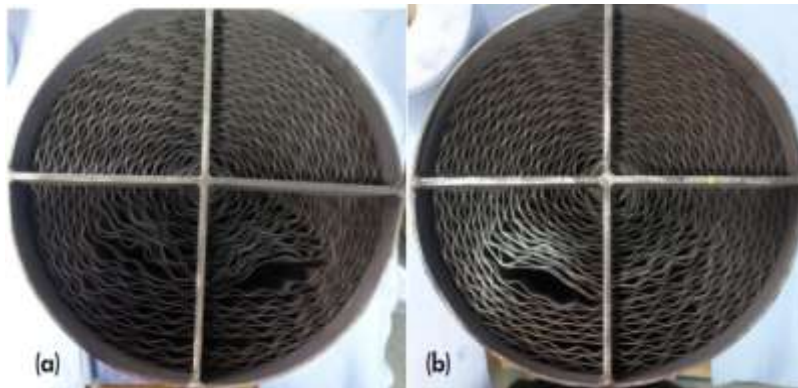
78. In accordance with established testing protocol for flame arresters (ISO 16852 section 7.3.2.2), Aber Shock intended to conduct the 2018 Test by subjecting the 6" Test Flame Arrester to a series of tests with each test increasing in intensity.

79. Under this testing protocol, the first test would subject the 6" Test Flame Arrester to the least amount of energy (*e.g.*, the lowest concentration of flammable gas). If the 6" Test Flame Arrester performed as intended, subsequent tests would gradually increase the energy to

1 determine whether the 6" Test Flame Arrester was suitable for the Lundberg Systems: the purpose
2 for which it had been designed, manufactured, and sold to PCA by the Lundberg Defendants.

3 80. The independent third-party test that was conducted in accordance with an
4 international testing protocol quickly demonstrated that the 6" Test Flame Arrester was completely
5 ineffective. Indeed, during the first, lowest energy test, a flame easily passed through the 6" Test
6 Flame Arrester.

7 81. Despite Aber Shock anticipating several rounds of testing, only one test was able
8 to be performed due to the impact that the lowest energy test had on the internal cylindrical device
9 of the 6" Test Flame Arrester. The image below marked (b) shows the damage to the unprotected
10 fact of the 6" Test Flame Arrester's internal cylindrical device immediately after the 2018 Test:



17 82. This failure is exactly contrary to the stated purpose of incorporating the Lundberg
18 Flame Arresters in the Lundberg Systems and presents a risk of explosion, injury, and death to
19 anyone working near the Lundberg Systems.

20 83. Luckily, the PCA Mills never experienced an explosion caused by the Lundberg
21 Flame Arresters. Therefore, it was not until consultants for PCA tested the 6" Test Flame
22 Arrester—January 2018—that PCA had an opportunity to learn that the Lundberg Flame Arresters
23 were possibly defective and unlikely to prevent the propagation of flames.

24 84. As confirmed during the 2018 Test at Aber Shock, the 6" Test Flame Arrester failed
25 to provide any protection against flame propagation, failed to serve as a flame arrester, failed to
26 perform as a safety device, and failed to serve the basic purpose for which it was designed,

1 manufactured, purchased, and installed. Instead, it accelerated propagation of the flame through
2 the system, which is directly contrary to the intended purpose of the flame arrester.

3 85. After the independent test results were known, PCA worked diligently to evaluate
4 replacement flame arresters manufactured and produced by other companies, to work with a new
5 engineering and design firm to provide effective work-arounds and changes in existing systems,
6 and removed all Lundberg Flame Arresters from the PCA Mills.

7 86. Each of the 57 Lundberg Flame Arresters that had been installed at the PCA Mills
8 were promptly disassembled and removed from the PCA Mills because they had not been designed,
9 manufactured, tested, or certified to U.S. and international standards, simple facts that had been
10 concealed from PCA by the Lundberg Defendants for decades. And, as a result of the 2018 Test,
11 the Lundberg Flame Arresters also appeared to have latent, internal defects and an inability to
12 eliminate flame propagation in the Lundberg Systems. PCA did all of this at its own costs, and
13 also took steps to suspend or terminate virtually all work being done at its mills by the Lundberg
14 Defendants.

15 87. The process of removing all Lundberg Flame Arresters required the PCA Mills to
16 be intermittently shut down, required new parts to be acquired, and required significant labor costs
17 and time.

18 88. PCA replaced the Lundberg Flame Arresters with a certified and tested flame
19 arrester designed and manufactured by a non-party.

20 89. PCA took these steps because the defective, untested, and uncertified Lundberg
21 Flame Arresters posed serious risk to PCA's property and employees and had to be removed and
22 replaced.

23 **B. The 2019 Test Confirmed That Lundberg Flame Arresters Are Defective.**

24 90. After removing the Lundberg Flame Arresters from the PCA Mills, PCA sent
25 multiple Lundberg Flame Arresters to Aber Shock, the same independent third-party testing
26

1 facility that conducted the 2018 Test. PCA wanted to validate the 2018 Test, and to test multiple
2 Lundberg Flame Arresters of various sizes that had been in service.

3 91. Aber Shock was available to conduct this testing in September 2019 (“2019 Test”).

4 92. Aber Shock conducted the tests in accordance with U.S. Coast Guard testing
5 protocols and standards, under the supervision of PCA and engineers from outside PCA.

6 93. During the 2019 Test, Lundberg Flame Arresters that were 2”, 4”, and 6” capacity
7 were tested and each and every Lundberg Flame Arrester failed each test. The Lundberg Flame
8 Arresters did absolutely nothing to stop or slow the passage of a flame from one side to another,
9 and flame easily and quickly passed through the internal cylindrical device.

10 94. Remarkably, the Lundberg Flame Arresters actually increased the velocity and
11 magnitude of flame propagation.

12 95. The 2019 Test showed that it is more dangerous to install a Lundberg Flame
13 Arrester in a Lundberg System than it is to simply install a straight pipe of the same size. In other
14 words, Lundberg Flame Arresters act as flame accelerators, not flame arresters, and are the exact
15 opposite in performance and efficacy than a safety device. The results of the testing are stark and
16 demonstrate the unreasonably dangerous nature of the Lundberg Flame Arresters.

17 96. PCA spent millions of dollars to purchase the Lundberg Systems, to test the
18 Lundberg Flame Arresters that were defective as designed, manufactured, sold, and installed by
19 the Lundberg Defendants, to purchase replacements for the defective Lundberg Flame Arresters,
20 and to stop manufacturing to complete the labor needed to install the new certified flame arresters
21 in the Lundberg Systems. All of these costs were brought about by the safety risks posed by the
22 defective Lundberg Systems and concealed by the Lundberg Defendants. PCA seeks to recover
23 all these costs and fees.

24 97. PCA reasonably believed that the Lundberg Defendants had designed,
25 manufactured, tested and/or certified the Lundberg Flame Arresters to U.S. and international
26 standards prior to installing them – taking reasonable steps to ensure that the Lundberg Flame

1 Arresters actually worked. The Lundberg Defendants concealed these material facts from PCA
2 and the industry. If PCA knew that the Lundberg Defendants had never tested and certified the
3 Lundberg Flame Arresters, PCA would not have purchased the Lundberg System from the
4 Lundberg Defendants.

5 98. PCA now seeks to recover all costs associated with the Lundberg Defendants'
6 defective products, including the Lundberg Systems and Lundberg Flame Arresters.

7 99. To the extent any applicable statute of limitation is at issue, it should be tolled due
8 to PCA's inability to discover the latent defects and the Lundberg Defendants' purposeful and
9 fraudulent concealment of both the latent defects and material facts. It would be inequitable to bar
10 PCA from proceeding with this claim given the bad acts of the Lundberg Defendants and the
11 difficulty inherent in discovering and confirming that the Lundberg Flame Arresters are
12 defectively designed, defectively manufactured, unsafe, and unfit for use as expressly and
13 implicitly warranted. This is especially true because the Lundberg Defendants held themselves
14 out as experts – basically the gold standard – in the industry for decades.

15 **FIRST CAUSE OF ACTION**
16 **PRODUCT LIABILITY – NEGLIGENCE**

17 100. PCA realleges and incorporates all prior paragraphs of this Complaint as if fully set
18 forth herein.

19 101. PCA was harmed by the negligence of the Lundberg Defendants in that the
20 Lundberg Systems and Lundberg Flame Arresters were not reasonably safe as designed.

21 102. PCA was harmed by the negligence of the Lundberg Defendants in that the
22 Lundberg Systems and Lundberg Flame Arresters were not reasonably safe because adequate
23 warnings or instructions were not provided.

24 103. The Lundberg Systems and Lundberg Flame Arresters are not reasonably safe as
25 designed because, at the time of manufacture, the likelihood that the Lundberg Systems and
26 Lundberg Flame Arresters would cause PCA harm and the seriousness of the harms facing PCA

1 outweighed the burden on the Lundberg Defendants to design a product that would have prevented
2 those harms.

3 104. At the time of manufacture, an alternative design was practical, feasible, and
4 already in existence and such alternative design would not encumber the purpose of the Lundberg
5 Systems and Lundberg Flame Arresters. Indeed, best practices for designing and manufacturing
6 NCG evacuation systems (like the Lundberg System) and flame arresters (like the Lundberg Flame
7 Arresters) demonstrates that the Lundberg Defendants' proprietary design is unreasonably unsafe
8 and defective.

9 105. Moreover, the Lundberg Systems and Lundberg Flame Arresters are not reasonably
10 safe because adequate warnings were not provided at the time of manufacture. Namely, the
11 Lundberg Defendants did not provide warnings informing PCA that the Lundberg Systems and
12 Lundberg Flame Arresters were ineffective, untested, unsafe, uncertified, and unable to perform
13 their primary purpose.

14 106. Additionally, the Lundberg Systems and Lundberg Flame Arresters are not
15 reasonably safe because the Lundberg Defendants learned after manufacturing the Lundberg
16 Systems and Lundberg Flame Arresters, or should have learned after manufacturing the Lundberg
17 Systems and Lundberg Flame Arresters, that the Lundberg Systems and Lundberg Flame Arresters
18 were inherently dangerous and not suitable for installation and use in the PCA Mills.

19 107. The Lundberg Defendants had a duty to warn PCA about the danger posed by the
20 Lundberg Systems and Lundberg Flame Arresters at the time of manufacture, or, alternatively,
21 subsequent to manufacture.

22 108. The Lundberg Defendants failed to provide a warning or instruction to PCA
23 regarding the inherently dangerous and defective nature of the Lundberg Systems and Lundberg
24 Flame Arresters.

25 109. As demonstrated above, the Lundberg Systems and Lundberg Flame Arresters are
26 inherently and unreasonably unsafe and fail to perform their primary purpose.

1 110. The inherently unsafe nature of the Lundberg Systems and Lundberg Flame
2 Arresters was known, or should have been known, to the Lundberg Defendants before or after the
3 date of manufacture.

4 111. The Lundberg Defendants should have tested the Lundberg Flame Arresters before
5 installing them in the Lundberg Systems.

6 112. The Lundberg Defendants should have certified the Lundberg Flame Arresters
7 before installing them in the Lundberg Systems.

8 113. The Lundberg Defendants' failure to test the Lundberg Flame Arresters is
9 unreasonable, unsafe, unjustified, and not consistent with engineering duties or best practices.

10 114. The Lundberg Defendants' failure to certify the Lundberg Flame Arresters is
11 unreasonable, unsafe, unjustified, and not consistent with engineering duties or best practices.

12 115. The Lundberg Defendants also should have followed engineering best practices
13 when designing the Lundberg Flame Arresters to ensure that the Lundberg Flame Arresters did
14 not suffer from the aforementioned inherent and latent problems.

15 116. Nevertheless, the Lundberg Defendants were negligent in designing and/or failing
16 to warn of the risks of the Lundberg Flame Arresters in violation of law.

17 117. The Lundberg Defendants had a duty to act as a reasonable engineering firm when
18 designing, manufacturing, assembling, installing, marketing, selling, and maintaining the
19 Lundberg Systems and the Lundberg Flame Arresters.

20 118. The Lundberg Defendants breached this duty to PCA by failing to test the Lundberg
21 Flame Arresters and accordingly failing to recognize and/or disclose that the Lundberg Flame
22 Arresters were incapable of performing their stated purpose.

23 119. PCA justifiably relied on the Lundberg Defendants' representations, both express
24 and implied, as well as its stated expertise in the field of engineering for the paper and pulp
25 industry.

1 120. PCA was directly and proximately damaged due to the Lundberg Defendants'
2 negligent conduct in an amount to be determined at trial.

3 **SECOND CAUSE OF ACTION**
4 **PRODUCT LIABILITY – STRICT LIABILITY**

5 121. PCA realleges and incorporates all prior paragraphs of this Complaint as if fully set
6 forth herein.

7 122. The Lundberg Defendants are strictly liable to PCA because PCA's harm was
8 caused by the fact that the Lundberg Systems and Lundberg Flame Arresters were not
9 reasonably safe in construction and did not conform to the Lundberg Defendants' express warranty
10 regarding the Lundberg Systems and Lundberg Flame Arresters.

11 123. The Lundberg Systems and Lundberg Flame Arresters are not safe in construction
12 because when they left the control of the Lundberg Defendants, the Lundberg Systems and
13 Lundberg Flame Arresters deviated in some material way from the design specifications or
14 performance standards of the Lundberg Defendants.

15 124. Specifically, despite the Lundberg Defendants' statements to the contrary, the
16 Lundberg Systems and Lundberg Flame Arresters were unsafe and not fit for installation or use in
17 the PCA Mills, including because the Lundberg Flame Arresters were not effective in acting as a
18 safeguard to prevent flames from spreading in the Lundberg System.

19 125. Similarly, the Lundberg Flame Arresters were not consistent with the performance
20 standards of Lundberg, which, at minimum, required the Lundberg Flame Arresters to prevent the
21 spread of flames in the Lundberg System and act as a "flame safeguard" in the Lundberg Systems.

22 126. Moreover, the Lundberg System and Lundberg Flame Arresters did not conform to
23 the Lundberg Defendants' express warranty regarding the Lundberg System and Lundberg Flame
24 Arresters.

25 127. Specifically, the Lundberg Defendants stated that the Lundberg Flame Arresters are
26 "an effective precaution against flame propagation and possible damage to process equipment."

1 128. The Lundberg Defendants also stated that the Lundberg Flame Arresters have
2 “proven to be a reliable and versatile device for system safety and protection.”

3 129. The Lundberg Defendants also stated that the Lundberg Flame Arresters were
4 developed in a proprietary manner to “meet the rigorous standards of” Lundberg Systems.

5 130. Each of these statements were material to PCA and justifiably relied upon by PCA.

6 131. Each of these statements were materially false and the Lundberg Defendants knew,
7 or should have known, that these statements were false. Specifically, among other reasons, the
8 Lundberg Defendants should have known that the statements were false due to their failure to test
9 or certify the Lundberg Flame Arresters, a key safety feature of the Lundberg Systems.

10 132. The Lundberg Defendants made these materially false statements with the intention
11 of inducing reliance on the part of PCA so that PCA would opt to purchase the Lundberg System
12 and Lundberg Flame Arrester as opposed to a competitor’s product.

13 133. PCA would not have purchased or utilized the Lundberg System or Lundberg
14 Flame Arresters if PCA knew that the safeguards inherent in the Lundberg Systems and Lundberg
15 Flame Arresters were defective.

16 134. PCA was harmed by the Lundberg Defendants’ conduct—conduct for which the
17 Lundberg Defendants are strictly liable—in an amount to be determined at trial.

18 **THIRD CAUSE OF ACTION**
19 **NEGLIGENCE**

20 135. PCA realleges and incorporates all prior paragraphs of this Complaint as if fully set
21 forth herein.

22 136. The Lundberg Defendants are an expert engineering firm who contracts to design,
23 manufacture, assemble, and install systems, including Lundberg Systems and Lundberg Flame
24 Arresters, at paper and pulp mills.

1 137. As such, the Lundberg Defendants had a duty to design its systems, including the
2 Lundberg Systems and Lundberg Flame Arresters, with appropriate safeguards sufficient to
3 minimize the risk encountered in transporting and incinerating combustible NCGs.

4 138. One aspect of this duty was the Lundberg Defendants' duty to test the Lundberg
5 Systems and Lundberg Flame Arresters prior to representing that they were safe and appropriate
6 for installation and use in the PCA Mills, including the Lundberg Defendants' representation that
7 the Lundberg Flame Arresters were an effective safeguard to prevent flame propagation in
8 Lundberg Systems.

9 139. The Lundberg Defendants' duties were especially important in this context given
10 that it knew that PCA was relying on it to design and install a safe and compliant Lundberg System
11 in the PCA Mills and that failure to provide a safe and compliant Lundberg System put employees'
12 lives and PCA's property at risk.

13 140. To address the known risk of combustion in Lundberg Systems, the Lundberg
14 Defendants used a "proprietary design" to manufacture the Lundberg Flame Arresters, specifically
15 noting that the Lundberg Flame Arresters were developed in a proprietary manner to "meet the
16 rigorous standards of [Lundberg Systems]." At a minimum, the "rigorous standards of [Lundberg
17 Systems]" includes safe operation as advertised and marketed by the Lundberg Defendants.

18 141. Nevertheless, the Lundberg Defendants breached their duty to PCA by designing,
19 manufacturing, assembling, and installing defective Lundberg Systems with defective Lundberg
20 Flame Arresters.

21 142. Both the Lundberg Systems and the Lundberg Flame Arresters had latent defects
22 that could not be and should not have reasonably been discovered by PCA until third-party testing
23 demonstrated and confirmed that the Lundberg Systems and Lundberg Flame Arresters were
24 defective. This did not occur until September 2019.

1 143. Further, the Lundberg Defendants breached their duty to PCA by installing
2 Lundberg Flame Arresters that had never been tested, had not been certified, and for which the
3 efficacy had not been confirmed.

4 144. The Lundberg Defendants' breach is especially egregious given that the Lundberg
5 Flame Arresters are a last line of defense in the Lundberg System and are supposed to prevent
6 property damage and serious injury or death.

7 145. The Lundberg Defendants' unsafe and negligent attitude towards the safety of the
8 Lundberg System, including its failure to test the Lundberg Flame Arrester, is the direct and
9 proximate cause of PCA's injury.

10 146. Indeed, PCA would not have spent millions of dollars testing and ultimately
11 replacing the Lundberg Systems and Lundberg Flame Arresters had these safety products worked
12 as advertised and marketed.

13 147. PCA also would not have purchased, installed, or maintained the Lundberg Systems
14 or Lundberg Flame Arresters if it had known that these products contained latent defects.

15 148. PCA also would not have replaced the defective Lundberg Systems and Lundberg
16 Flame Arresters had they not been defective.

17 149. PCA could have avoided shutting down the PCA Mills to complete the repair and
18 replacement work had the Lundberg Systems and Lundberg Flame Arresters performed as
19 warranted, advertised, and marketed by the Lundberg Defendants.

20 150. PCA was harmed by the Lundberg Defendants' negligence in the amount of
21 millions of dollars, the exact amount to be determined at trial.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY – FITNESS FOR A PARTICULAR PURPOSE

151. PCA realleges and incorporates all prior paragraphs of this Complaint as if fully set forth herein.

152. The Lundberg Defendants knew that PCA hired them to design a safe and effective Lundberg System at the PCA Mills.

153. The Lundberg Defendants also knew that PCA was not an expert in the design, manufacture, assembly, or installation of Lundberg Systems.

154. The Lundberg Defendants knew that PCA was relying on the Lundberg Defendants' engineering expertise for paper and pulp mills when PCA hired the Lundberg Defendants to design, manufacture, assemble, and install the Lundberg System and Lundberg Flame Arresters.

155. By virtue of the Lundberg Defendants stating that the Lundberg Systems and Lundberg Flame Arresters were safe and fit for installation and use in the PCA Mills, including the Lundberg Defendants' representation that the Lundberg Flame Arresters were an effective safeguard against flame propagation, PCA justifiably and reasonably believed that the Lundberg Defendants had a basis to represent that the Lundberg Flame Arresters would prevent flame propagation throughout the Lundberg System.

156. By virtue of the Lundberg Defendants installing the Lundberg Flame Arresters in the Lundberg System after having repeatedly noted the highly combustible nature of NCG gases, PCA justifiably and reasonably believed that the Lundberg Flame Arresters were safe and fit to be installed and used in the Lundberg Systems.

157. At minimum, PCA justifiably and reasonably believed that the Lundberg Defendants had tested the Lundberg Flame Arresters prior to integrating them as a safeguard in the highly combustible Lundberg System given how many representations the Lundberg

1 Defendants made regarding the need for Lundberg Systems to incorporate properly operating
2 flame arresters.

3 158. Nevertheless, the Lundberg Defendants had not tested the Lundberg Flame
4 Arresters and had no basis to represent that the Lundberg System was safe for use in the PCA
5 Mills.

6 159. Had the Lundberg Defendants tested the Lundberg Flame Arresters, they would
7 have quickly discovered that the proprietary design utilized by the Lundberg Defendants was
8 ineffective and actually served to act as a flame accelerator as opposed to a flame arrester.

9 160. As a result of the Lundberg Defendants' unreasonable decision not to test the
10 Lundberg Flame Arresters, the Lundberg Systems and the Lundberg Flame Arresters were not fit
11 for their intended purpose of safely transporting and disposing of NCGs at the PCA Mills.

12 161. The Lundberg Defendants knew that PCA was relying on the Lundberg
13 Defendants' status as an expert engineering firm when it manufactured, designed, assembled, and
14 installed the defective Lundberg Flame Arresters in the Lundberg Systems.

15 162. PCA is not an expert engineering firm and does not design, manufacture, assemble,
16 or install Lundberg Systems. It thus justifiably and reasonably relied on the Lundberg Defendants'
17 expertise and design specifications.

18 163. PCA had no way of knowing that the Lundberg Flame Arresters were defectively
19 designed until the 2019 Tests were completed.

20 164. The Lundberg Defendants' breach of the implied warranties directly and
21 proximately caused PCA's injury in an exact amount to be determined at trial.

22 **FIFTH CAUSE OF ACTION**
23 **BREACH OF EXPRESS WARRANTY**

24 165. PCA realleges and incorporates all prior paragraphs of this Complaint as if fully set
25 forth herein.
26

1 166. The Lundberg Defendants expressly warranted that the Lundberg Flame Arresters
2 are “an effective precaution against flame propagation and possible damage to process equipment.”

3 167. The Lundberg Defendants also stated that the Lundberg Flame Arresters have
4 “proven to be a reliable and versatile device for system safety and protection.”

5 168. The Lundberg Defendants also stated that the Lundberg Flame Arresters were
6 developed in a proprietary manner to “meet the rigorous standards of” Lundberg Systems.

7 169. These statements were material to PCA and PCA justifiably relied on these
8 statements made by the Lundberg Defendants.

9 170. PCA would not have hired the Lundberg Defendants to design, manufacture,
10 assemble, and install the Lundberg Systems and Lundberg Flame Arresters at the PCA Mills but
11 for the representations that the Lundberg Systems and Lundberg Flame Arresters were safe and
12 compliant with all applicable environmental and safety regulations and standards.

13 171. These statements made by the Lundberg Defendants are false as shown by the
14 results of the 2019 Tests.

15 172. Moreover, the Lundberg Defendants had no basis on which to make these
16 statements as they had unreasonably and unjustifiably decided to not test or certify the Lundberg
17 Flame Arresters.

18 173. The Lundberg Defendants made express safety-related statements for which it had
19 no basis in order to induce PCA to purchase and install the Lundberg Systems and Lundberg Flame
20 Arresters at the PCA Mills.

21 174. PCA’s justifiable reliance led it to expose its employees and mills to unrealized
22 danger. It also exposed PCA to millions of dollars in damages, none of which would have occurred
23 but for the unreasonable and unjustifiable misrepresentations made by the Lundberg Defendants.

24 175. The Lundberg Defendants breached express warranties made to PCA.

25 176. The Lundberg Defendants’ breach of the express warranties directly and
26 proximately caused PCA’s injury in an exact amount to be determined at trial.

SIXTH CAUSE OF ACTION
FRAUD

177. PCA realleges and incorporates all prior paragraphs of this Complaint as if fully set forth herein.

178. The Lundberg Defendants know that the Lundberg Systems transport flammable and highly combustible NCGs and that “these gases present the possibility of flame propagation in the collection system’s pipe lines.”

179. The Lundberg Flame Arresters were designed and marketed as a safeguard to minimize the risk of flame propagation in the Lundberg Systems.

180. Nevertheless, the Lundberg Defendants never tested the efficacy of the Lundberg Flame Arresters, never had them certified and had no basis on which to believe that they would act as a safeguard to prevent flame propagation.

181. The Lundberg Defendants thus made false statements of material fact regarding the efficacy of the Lundberg Flame Arresters. Moreover, the Lundberg Defendants actively concealed material facts – no testing and no certification – from PCA.

182. Specifically, the Lundberg Defendants stated that the Lundberg Flame Arresters are “an effective precaution against flame propagation and possible damage to process equipment.”

183. The Lundberg Defendants also stated that the Lundberg Flame Arresters have “proven to be a reliable and versatile device for system safety and protection.”

184. The Lundberg Defendants also stated that the Lundberg Flame Arresters were developed in a proprietary manner to “meet the rigorous standards of” Lundberg Systems.

185. The Lundberg Defendants knew that these statements of material fact were false because they never tested or certified the Lundberg Flame Arresters and thus had no basis on which to make such claims.

186. The Lundberg Defendants made these statements to induce PCA to buy Lundberg Systems and Lundberg Flame Arresters in an effort to make a profit and notwithstanding that it

1 put PCA's employees at risk of serious injury or death and threatened property damage to PCA's
2 Mills.

3 187. The Lundberg Defendants knew that PCA was relying on the Lundberg
4 Defendants' engineering expertise and that PCA relied on these and other representations when
5 deciding to hire the Lundberg Defendants to design, manufacture, install, and assemble the
6 Lundberg Systems and Lundberg Flame Arresters at the PCA Mills.

7 188. The Lundberg Defendants also knew that PCA would not have hired the Lundberg
8 Defendants to design, manufacture, install, and assemble the Lundberg Systems and Lundberg
9 Flame Arresters if PCA knew that the Lundberg Flame Arresters were ineffective and did not
10 prevent flame propagation.

11 189. PCA was directly and proximately damaged by the Lundberg Defendants' material
12 and knowing false statements because it cost PCA millions of dollars to purchase the Lundberg
13 Systems, maintain the Lundberg Systems, test the Lundberg Flame Arresters, replace the Lundberg
14 Flame Arresters with work-arounds to incorporate a non-native product into the Lundberg System,
15 and stop production at the PCA Mills to complete the replacement.

16 190. PCA's injury was directly and proximately caused by the knowingly false
17 statements of the Lundberg Defendants.

18 191. The Lundberg Defendants' fraudulent conduct and fraudulent statements directly
19 and proximately caused PCA's injury in an exact amount to be determined at trial.

20 **SEVENTH CAUSE OF ACTION**

21 **UNFAIR AND DECEPTIVE BUSINESS PRACTICES (RCW 19.86.020)**

22 192. PCA realleges and incorporates all prior paragraphs of this Complaint as if fully set
23 forth herein.

24 193. Pursuant to RCW 19.86.020, the Lundberg Defendants engaged in unfair methods
25 of competition and unfair or deceptive acts or practices in the conduct of knowingly selling PCA
26 the defective Lundberg Systems and Lundberg Flame Arresters with latent defects.

1 194. The Lundberg Defendants held themselves out to be an expert engineering firm
2 with a specific emphasis in the paper and pulp mill industry.

3 195. In fact, the Lundberg Defendants describes themselves as “a leading engineering
4 and equipment supplier in the pulp and paper industry, wood products industry, and many other
5 process industries.”

6 196. The Lundberg Defendants acknowledge that “[t]he nature of the noncondensable
7 gases is to be extremely flammable. The design of the [Lundberg System] includes multiple
8 backup systems to insure the greatest amount of flame safeguards and to minimize any remotely
9 possible damage.”

10 197. The “backup systems” and “flame safeguards” described by the Lundberg
11 Defendants including, among other things, the Lundberg Flame Arresters.

12 198. The Lundberg Defendants describe the role of Lundberg Flame Arresters in a
13 Lundberg System as follows: “these flow devices placed at strategic locations in the system are
14 designed to block the propagation of the flame in the noncondensable gas system. The cylindrical
15 devices have a core of thin gauge stainless steel to serve as the arresting method. The flame
16 arresters are intended to:

- 17 a. Dissipate the heat of combustion as rapidly as possible by large surface area to act
18 as a heat sink.
19 b. Disrupt the shock front associated with the flame propagation.”

20 199. The Lundberg Flame Arresters are an integral part of the Lundberg System and
21 without properly functioning Lundberg Flame Arresters the Lundberg System would be unsafe
22 and not fit for installation in a paper and pulp mill.

23 200. In fact, in marketing material prepared and disseminated by the Lundberg
24 Defendants, the Lundberg Defendants describes the Flame Arresters as follows:

25 The collection of [Total Reduced Sulfur compounds] and volatile
26 gases in Noncondensable [sic] Gas (NCG) and Odor Abatement

1 Systems is an integral part of the pulp mill's environmental
2 program. The flammability of many of these gases presents the
3 possibility of flame propagation in the collection system's pipe
4 lines. The flame arrester is an effective precaution against flame
5 propagation and possible damage to process equipment. To meet
6 the rigorous standards of our Lundberg Systems, Lundberg
7 Associates developed and supplies a proprietary designed flame
8 arrester.

9 Since 1977, in more than two hundred installations, the Lundberg
10 Associates' Flame Arrester has proven to be a reliable and versatile
11 device for system safety and protection.

12 201. Nevertheless, the Lundberg Defendants—an expert engineering firm in the paper
13 and pulp mill industry—failed to test the Lundberg Flame Arresters despite acknowledging that
14 the Lundberg Flame Arresters are an integral safeguard for the Lundberg Systems.

15 202. Had the Lundberg Defendants tested the Lundberg Flame Arresters, they would
16 have known that the Lundberg Flame Arresters do not work and, instead, accelerate flames
17 throughout the Lundberg Systems.

18 203. The Lundberg Defendants' false representations regarding the safety and efficacy
19 of the Lundberg Systems and the Lundberg Flame Arresters constitutes a deceptive and unfair
20 business practice.

21 204. The Lundberg Defendants' reliance on its status as an expert engineering firm to
22 sell Lundberg Systems without testing the integral safeguards, such as the Lundberg Flame
23 Arresters, is a deceptive and unfair business practice.

24 205. PCA would not have purchased the Lundberg System or Lundberg Flame Arrester
25 if Lundberg had disclosed that it had not tested the Lundberg Flame Arresters or that the Lundberg
26 System was unsafe and unfit for installation and use in the PCA Mills.

206. PCA would not have purchased the Lundberg System or Lundberg Flame Arresters
if Lundberg had disclosed that the Lundberg System was unsafe and lacking effective safeguards.

PRAYER FOR RELIEF

G. All other damages deemed suitable by this Court.

1 Dated: October 31, 2019

Respectfully submitted,

2 /s/ Christopher B. Durbin

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